

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

UMG RECORDINGS, INC., et al.,)	
)	
Plaintiffs,)	
)	
vs.)	
)	No. 1:17-cv-00365-DAE-AWA
GRANDE COMMUNICATIONS)	
NETWORKS LLC,)	
)	
Defendant.)	

**DEFENDANT GRANDE COMMUNICATIONS NETWORKS LLC’S
OPPOSED MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF IN
SUPPORT OF MOTION FOR EVIDENTIARY SANCTIONS BASED ON
SPOILIATION OF RIGHTSCORP EVIDENCE (ECF NO. 247)**

Defendant Grande Communications Networks LLC (“Grande”) seeks leave to file a Supplemental Brief presenting additional support for its Motion for Evidentiary Sanctions Based on Spoliation of Rightscorp Evidence (ECF No. 247). Good cause exists to supplement the record as essential information regarding the Rightscorp System was not available to Grande prior to the deadline for filing its Reply brief.

BACKGROUND

On January 3, 2019, Grande filed its Motion for Evidentiary Sanctions Based on Spoliation of Rightscorp Evidence. *See* ECF No. 247. Plaintiffs filed their Response in Opposition two weeks later on January 17, 2019. *See* ECF No. 253.

In support of its Response in Opposition, Plaintiffs submitted a new declaration from Rightscorp’s lead software engineer, Mr. Gregory Boswell. Plaintiffs also submitted a declaration from their technical expert, Mrs. Barbara Frederiksen-Cross, which referred to recent conversations she conducted with Mr. Boswell regarding the operation of the Rightscorp System.

On January 18, 2019, counsel for the parties held a telephone conference in which Plaintiffs agreed to produce additional information in response to the filing of Grande's Motion for Sanctions and also agreed to produce Mr. Boswell for a second deposition.

On February 27, 2019, Plaintiffs produced a spreadsheet purporting to contain additional data extracted from the Rightscorp System. Plaintiffs also confirmed that they were working to identify potential dates for Mr. Boswell's second deposition. Plaintiffs did not provide Grande with proposed dates for Mr. Boswell's deposition until nearly three months later on May 15th, at which time Mr. Boswell's deposition was set for June 6, 2019.

On June 4, 2019, Plaintiffs' counsel informed Grande that Mr. Boswell had fallen ill and that his deposition would need to be postponed. The deposition was eventually rescheduled for June 26, 2019, on which date Grande completed Mr. Boswell's second deposition.

After the close of fact discovery in July of 2018, and also after Mr. Boswell was first deposed in August of 2018, Plaintiffs and the RIAA produced a significant volume of new evidence in this case. This new evidence includes three declarations from Mr. Boswell, a rebuttal expert report and separate declaration from technical expert Mrs. Frederiksen-Cross, a series of change management logs relating to the Rightscorp System source code, a spreadsheet of download data purportedly exported from the Rightscorp System, and a series of agreements, notes and bid proposals relating to the RIAA and/or Rightscorp.

Pursuant to agreement reached between the parties, and in light of the significant volume of materials produced subsequent to Mr. Boswell's first deposition, the parties agreed to focus Mr. Boswell's second deposition on the following six topics:

1. changes to Rightscorp's software reflected in change management logs;
2. the extent to which changes in the operation of Rightscorp's system are reflected in the change management logs (i.e., whether particular changes would or would not be

reflected in the change management logs);

3. the content of the spreadsheet produced by Rightscorp on February 27, including the nature and origin of that data;
4. the existence, nature, and origin of any data regarding files downloaded from Grande IP addresses with SampleIt2 that is not reflected in that spreadsheet;
5. the frequency with which Rightscorp attempted to download files from Grande IP addresses with SampleIt2; and
6. rightscorp's receipt, retention, and review of bitfield, request, choke, and have data.

ARGUMENT

Grande filed its Motion for Evidentiary Sanctions without reviewing a significant volume of materials that have now been produced in this case. These materials include three declarations submitted by Mr. Boswell, a rebuttal report and subsequent declaration submitted by Plaintiffs' technical expert, Ms. Barbara Frederiksen-Cross, which relied on conversations with Mr. Boswell, source code change logs for the Rightscorp System, a spreadsheet reflecting certain outputs from the Rightscorp System, and a series of contracts, bid proposals and related notes involving the RIAA and Rightscorp. Grande also filed its Motion for Sanctions without the benefit of testimony from Mr. Boswell on the materials set forth above.

Good cause exists to allow Grande to file a supplemental brief as it was impossible for Grande to reference these materials or to the testimony of Mr. Boswell at the time Grande completed its original briefing on its Motion for Evidentiary Sanctions.

If granted permission to file a supplemental brief, Grande seeks to bring to the Court's attention certain highly-relevant admissions made by Mr. Boswell during his deposition on June 26, 2019. As Grande's supplemental brief will demonstrate, Mr. Boswell's testimony confirms that Plaintiffs and Rightscorp were responsible for the destruction of a significant volume of material evidence vital to Grande's defense of this case.

For the reasons above, Grande respectfully requests the Court to grant it leave to file a Supplemental Brief in Support of Motion for Evidentiary Sanctions.

Dated: July 19, 2019

By: /s/ Richard L. Brophy

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CERTIFICATE OF CONFERENCE

Pursuant to Local Rule CV-7(i), the undersigned certifies that counsel for the parties conferred and that Plaintiffs oppose the relief sought. Accordingly, this motion and the relief requested herein are opposed.

/s/ Richard L. Brophy
Richard L. Brophy

CERTIFICATE OF SERVICE

The undersigned certifies that on July 19, 2019, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system pursuant to Local Rule CV-5(b)(1).

/s/ Richard L. Brophy
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